

TTAB

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
CASE NO.: 2012-1277
(Cancellation No. 92054391)**

HAL GREENE,

Appellant,

v.

TIMOTHY PITKA,

Appellee.

78,304.408

**SUPPLEMENTAL MOTION FOR REMAND TO TTAB AND DISMISSAL OF APPEAL
BASED ON THE TTAB'S APRIL 27, 2012 ORDER HOLDING THAT IT IS INCLINED
TO GRANT RESPONDENT'S 60(b) MOTION**

COMES NOW, Registrant and Appellant HAL GREENE (hereinafter "Mr. Greene") by and through his undersigned attorneys and pursuant to Federal Rule of Appellate Procedure 12.1 hereby files the instant Supplemental Motion for remand to the Trademark Trial and Appeal Board ("TTAB") and dismissal of the instant appeal based on the TTAB's recent order and states as follows:

1. On February 9, 2012, Mr. Greene timely filed its Notice of Appeal in the instant case. That same day, Mr. Greene also filed a Motion to Stay the Appeal and Remand to the TTAB for a ruling on Mr. Greene's 60(b) Motion for Relief from Judgment.

2. As of yet, no ruling has been made on Mr. Greene's Motion and Mr. Greene's brief is due on May 22, 2012.



05-03-2012

3. On April 27, 2012, the TTAB issued an Order holding that Mr. Greene's motion was "timely, having been filed less than two months since the entry of default judgment" and that the "motion has sufficiently addressed the factors of prejudice, meritorious defense, and willfulness such that [Mr. Greene] has established excusable neglect to obtain relief from entry of judgment." The TTAB went on to hold that "we would be inclined to grant [Mr. Greene's] Motion for Relief from Final Judgment, and will provide a fuller analysis of our decision, should the case be remanded by an order of the appellate court." A true and correct copy of the TTAB Order is attached hereto as Exhibit "A."

4. Based on the TTAB's ruling, Mr. Greene respectfully requests that this honorable Court remand this case to the TTAB so that the TTAB can provide a fuller analysis of its decision. In addition, because the TTAB has stated that Mr. Greene's 60(b) motion will be granted, the appeal is now rendered moot and should be dismissed pursuant to Federal Rule of Appellate Procedure 12.1.

5. Mr. Greene further requests that such decision be made promptly so that Appellant is not required to expend the time and money preparing its Brief and appendix, which is currently due on **May 22, 2012**.

WHEREFORE, Registrant/Appellant respectfully requests that the Federal Circuit remand the instant appeal to the TTAB and subsequently dismiss the appeal as being rendered moot by the TTAB's April 27, 2012 Order.

DATED this 30th day of April, 2012.

Respectfully Submitted,
BEUSSE WOLTER SANKS
MORA, & MAIRE, P.A.

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Orlando, Florida 32801
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Attorneys for Plaintiff

By: 

Terry M. Sanks
Florida Bar No.: 154430
Amber N. Davis
Florida Bar No.: 0026628

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed via Express Mail, this 30th day of April, 2012 to: Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; Clerk of Court, United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington D.C., 20439; Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451; Keith Barritt, Fish & Richardson, PC, P.O. Box 1022, Minneapolis, MN 55440-1022. A true and correct copy has also been emailed to counsel for Petitioner at barritt@fr.com as well as filed in the instant cancellation proceeding (cancellation No. 92054391).

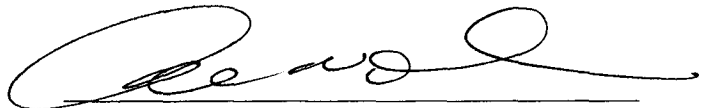

Attorney

EXHIBIT “A”

Goodman

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 27, 2012

Cancellation No. 92054391

Mr. Timothy Pitka

v.

Hal Greene

Before Quinn, Mermelstein and Ritchie, Administrative
Trademark Judges.

By the Board:

On December 12, 2011, the Board entered default judgment against respondent after service by publication, and on February 6, 2012, respondent filed a Motion for Relief from Final Judgment and Motion to Re-open the Proceedings pursuant to Fed. R. Civ. P. "60(b)(1), 60(b)(6), 55(c), 6(b), and 37 § C.F.R. 2.116(a)." Then on February 9, 2012, respondent filed a notice of appeal with the United States Court of Appeals for the Federal Circuit also seeking to stay the appeal and remand to this Board for consideration of his motion for relief from final judgment.

This order is intended to comply with the United States Court of Appeals for the Federal Circuit's procedure for Fed. R. Civ. P. 60(b) motions filed after a notice of appeal is timely filed. *See Home Prods. Int'l, Inc. v. United*

Cancellation No. 92054391

States, 633 F.3d 1369, 1378 n.9 (Fed Cir 2011); *cf.* Fed. R. App. P. 12.1.

We consider respondent's motion to be one for relief from judgment under Fed. R. Civ. P. 60(b)(1). Any motion requesting such relief must be made within a reasonable time, and within one year under Rule 60(b)(1). Fed. R. Civ. P. 60(c)(1). A party may move to vacate under Rule 60(b)(1) on the basis of (1) mistake, inadvertence, surprise, or excusable neglect. Among the factors to be considered in determining a Rule 60(b) motion to vacate a default judgment are the following: (1) whether the non-defaulting party will be prejudiced, (2) whether the default was willful, and (3) whether defendant has a meritorious defense. *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). Whether to grant or deny a motion to vacate under Rule 60(b) is within the Board's discretion. *Djeredjian v. Kashi Co.*, 21 USPQ2d at 1615.

Here, we find that respondent's motion is timely, having been filed less than two months since the entry of default judgment. We find that respondent's motion has sufficiently addressed the factors of prejudice, meritorious defense, and willfulness such that respondent has established excusable neglect to obtain relief from entry of judgment. We would be inclined to grant respondent's Motion for Relief from Final Judgment, and will provide a fuller

Cancellation No. 92054391

analysis of our decision, should the case be remanded by an order of the appellate court.¹

¹ Respondent should provide a copy of this order to the United States Court of Appeals of the Federal Circuit, to supplement his motion for remand filed with the appellate court. *Cf.* Fed. R. App. P. 12.1(a).

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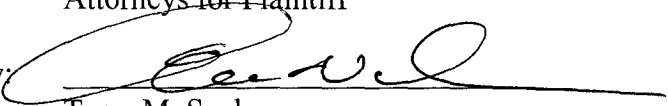
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DATED this 30th day of April, 2012.

Respectfully Submitted,
BEUSSE WOLTER SANKS
MORA, & MAIRE, P.A.

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Attorneys for Plaintiff

By:


Terry M. Sanks
Florida Bar No.: 154430
Amber N. Davis
Florida Bar No.: 0026628

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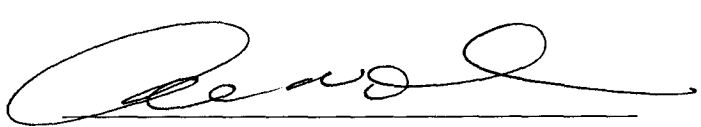

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¹ Respondent should provide a copy of this order to the United States Court of Appeals of the Federal Circuit, to supplement his motion for remand filed with the appellate court. Cf. Fed. R. App. P. 12.1(a).

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

HAL GREENE v. TIMOTHY PITKA,

CASE NO.: 2012-1277
(Cancellation No. 92054391)

CERTIFICATE OF INTEREST

Counsel for the Appellant, HAL GREENE, certifies the following:

1. The full name of every party or amicus represented by me is: Hal Greene
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A

3. All parent corporations and publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

N/A

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Terry M. Sanks, Esquire (Counsel for Appellant)
Amber N. Davis (Counsel for Appellant)
Beusse Wolter Sanks Mora & Maire, P.A.

DATED this 30th day of April, 2012.

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Attorneys for Plaintiff

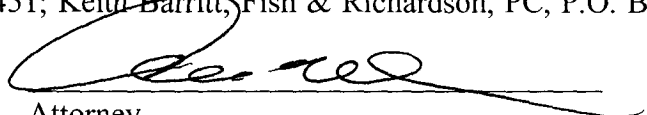
By:



Amber N. Davis
Florida Bar No.: 0026628

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I HEREBY CERTIFY that I filed an original and one copy of this Docketing Statement with the Clerk of the United States Court of Appeals for the Federal Circuit and that a true and correct copy of the foregoing has been mailed via U.S. Mail, this 30th day of April, 2012 to: Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; Clerk of Court, United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington D.C., 20439; Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451; Keith Barritt, Fish & Richardson, PC, P.O. Box 1022, Minneapolis, MN 55440-1022.


Attorney